

## EFTA COURT

### **Request for an Advisory Opinion from the EFTA Court by the Princely Court of Appeal dated 3 December 2019 in the case Bergbahn Aktiengesellschaft Kitzbühel v Meleda Anstalt**

(Case E-10/19)

A request has been made to the EFTA Court dated 3 December 2019 from the Princely Court of Appeal (Fürstliches Obergericht), which was received at the Court Registry on 5 December 2019, for an Advisory Opinion in the case Bergbahn Aktiengesellschaft Kitzbühel v Meleda Anstalt on the following questions:

**How must Article 30(1) of Directive (EU) 2015/849 be interpreted?**

**I.**

- 1. How must the provision that incorporated and other legal entities are required to obtain adequate information on their beneficial ownership be interpreted? Does it suffice, as a rule, that the obliged entity is notified of who the beneficial owner is or must, in addition, also the underlying documents with evidential value (articles of association, etc.) be produced?**
- 2. In the event that mere provision of information does not suffice but, as a rule, also the underlying documents (articles of association, etc.) must be produced: Is this situation in any way altered where the beneficial owner is a legal person with a registered office in an EEA State and, thus, is also subject to the provisions of Directive (EU) 2015/849? Does the mere provision of information suffice at least in this case?**
- 3. If Question 2 is answered in the negative: Is this situation in any way altered where the board of the beneficial owner is a lawyer, notary or a (business) trustee, who under national law, is under an obligation, subject to the threat of a severe penalty or, potentially, withdrawal of the authority to practice in the case of non-compliance, to provide complete and accurate information and to**

**whom the national legal order accords particular confidence?**

**4. If Question 3 is also answered in the negative and thus an obligation to produce the underlying documents (articles of association, etc.) exists in every case:**

**a) What is the minimum extent of documents to be produced having regard to the principle of data minimisation specified in Article 5(1)(c) of Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)?**

**b) How must the non-existence of indirect ownership or the non-existence of ultimate control by a natural person within the meaning of Article 3(6)(b)(v) and Article 3(6)(c) of Directive (EU) 2015/849 be proven (in light of the maxim that there is no obligation to prove negative circumstances - “negativa non sunt probanda”)?**

**II. Regardless of the answers given to the questions set out in section I:**

**1. How must the entity obliged to obtain appropriate information pursuant to Article 30(1) of Directive 2015/849 proceed where the beneficial owner refuses to provide information and/or - depending on the answers given to the questions set out in Section I – to produce the underlying documents or does not provide accurate and current information: Is the obliged entity then obliged at their own risk and expense to bring legal action against the beneficial owner for provision of information or, if available, to bring a similar legal action provided for under national law or can it be satisfied with the information provided to it by the beneficial owner or the refusal to disclose information? Must in this case, if need be, Article 3(6)(a)(ii) of Directive (EU) 2015/849 be applied *mutatis mutandis*, which refers to "having exhausted all possibilities", in other words, must the necessary exhaustion of all possibilities be understood as including the bringing of legal action at one's own risk and expense?**

**2. If the previous question is answered in the affirmative (i.e. that an obligation to bring legal action exists): Must then, if needs be,**

**Article 3(6)(a)(ii) of this Directive be applied mutatis mutandis, so that an obligation to bring legal action at one's own risk and expense exists where there are grounds for suspicion or there is any doubt (even if only the slightest) in relation to the information provided?**